

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NASSAU

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PRESIDENT R.C.-ST. REGIS MANAGEMENT
COMPANY and IVAN KAUFMAN,
Plaintiffs,

- against -

PARK PLACE ENTERTAINMENT CORP., ARTHUR
GOLDBERG and CLIVE CUMMIS,
Defendants.

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100 Maiden Lane
New York, New York 10038

August 22, 2002
11:00 a.m.
(Record Opened: 11:15 a.m.)

Continued Examination Before Trial
of Plaintiff IVAN KAUFMAN, taken by Defendants,
pursuant to adjournment of June 18, 2002,
before Susan L. Cohen, a Notary Public of the
State of New York.

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1 Kaufman

2 A No.

3 Q Not even a rough estimate?

4 A No.

5 Q Was it more than half?

6 A I don't know.

7 Q So if I asked you to draw me a
8 sketch of how much foundation had been poured,
9 would you be able to do that? This is at the
10 time after having signed a management
11 agreement.

12 A I can't recall.

13 MR. LEVANDER: You have a leeway,
14 but the percentage of the foundation that
15 was poured at the time he entered into the
16 management agreement, it is not obvious as
17 to why that is relevant to the litigation
18 we have.

19 MR. HOFF: It is.

20 THE WITNESS: Let's take a minute.

21 (Counsel and the witness leave the
22 deposition room and return.)

23 Q I would like to talk about the
24 acquisition of your Melius and President
25 Riverboat divisions.

1 Kaufman

2 I believe you said in the beginning
3 of your deposition that you did not and still
4 to this day have not paid the entire purchase
5 price to Melius; is that correct?

6 A That's correct.

7 Q Just so we are clear, of the
8 purchase price, how much did you actually pay?

9 A I don't recall.

10 Q Was it somewhere on the order of a
11 half a million dollars, something of that
12 range?

13 A 750 to a million and a quarter,
14 something like that. Say half a million to a
15 million and a quarter.

16 Q Do you have some understanding as to
17 how much you are still owing?

18 A I haven't looked at it.

19 MR. HOFF: Mark this as Exhibit 71.

20 (Defendants' Exhibit 71, Fax Cover
21 and Drafts of Agreement for Purchase of
22 Partnership Interest, marked for
23 identification.)

24 Q The court reporter is handing you
25 Defendant's Exhibit 71, which consists of a fax
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2 cover sheet of a fax from Walter Horn to Gary
3 Melius and Joseph Membrino dated September 24,
4 1997, and behind the fax cover sheet are two
5 what appear to be draft agreement for purchase
6 of partnership interest. Do you see that?

7 A Yes.

8 Q One is entitled "Agreement for
9 Purchase of Partnership Interest"; the other is
10 just entitled "Agreement."

11 Do you see those?

12 A Yes.

13 Q Have you ever seen this document
14 before?

15 A I believe so.

16 Q What is it?

17 A It is an agreement for the purchase
18 of the partnership interest between or among
19 Massena Management Corp., Gary Melius, Native
20 American Management Corp., and PRC St. Regis.

21 Q Am I correct that this document that
22 is titled "Agreement for Purchase of
23 Partnership Interest" is a draft of the
24 agreement by which you purchased Melius'
25 interest in the management agreement?

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1 Kaufman

2 A I believe so.

3 Q Now, you see at the very top of the
4 pages there is a fax line that has page
5 numbers?

6 A Yes.

7 Q The one we just looked at is 2 of
8 35?

9 A Yes.

10 Q Why don't you go to 17 of 35.

11 A Okay.

12 Q This is a document entitled
13 "Agreement."

14 Am I correct that this is a draft of
15 the agreement by which you purchased the
16 St. Regis Riverboat entity's interest in the
17 management agreement?

18 A I believe so.

19 Q Do you know whether these two
20 agreements were ever actually executed?

21 A I believe so.

22 Q Do you know where the copies of the
23 executed agreements are?

24 A No.

25 Q Take a look on the first agreement,
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2 the one with Melius, the Melius buyout
3 agreement. If we look at page 4 out of 35 of
4 the fax line, paragraph 4 describes the
5 purchase price?

6 A Yes.

7 Q Okay. And that is \$4,990,000,
8 correct?

9 A Right.

10 Q The paragraph lays out a schedule of
11 payments. Do you see that?

12 A Yes.

13 Q The first payment was supposed to
14 have been made when this agreement was signed,
15 and that would have been for \$250,000?

16 A Okay.

17 Q First of all, does paragraph 4
18 reflect your understanding of your purchase
19 price for the buyout of Melius?

20 A Yes.

21 Q Was the \$250,000 signing payment
22 actually made?

23 A I don't recall whether it was paid
24 then or later on. It is my recollection it was
25 paid; I'm just not sure of the time.

1 Kaufman

2 Q Were any other payments described in
3 paragraph 4 actually made to Melius?

4 A I believe the \$500,000 was also
5 made.

6 Q Any others?

7 A I don't know.

8 Q There is a reference in here to the
9 closing date. Was there actually a closing for
10 this transaction?

11 A I don't recall.

12 Q Do you have an understanding as to
13 whether there were any specific reasons why
14 Melius had to extricate himself from the
15 management agreement?

16 A Can you repeat the question, please?

17 Q Yes. Do you have an understanding
18 as to whether there were any specific reasons
19 why Melius had to sell out his interest in the
20 management agreement?

21 A He told me he was unable to get
22 approved by the NIGC.

23 Q Did you have any understanding as to
24 what the NIGC's objection to Mr. Melius was?

25 A One issue I was told was he had a
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1 Kaufman

2 prior bankruptcy and just -- that was one
3 reason I was told. I never had a clear picture
4 other than that.

5 Q Did you ever hear that there were
6 concerns that the NIGC had as to any possible
7 ties Melius had to organized crime?

8 A No.

9 Q Was there any discussion between
10 anybody representing President, including
11 yourself, and Melius or any of his
12 representatives with respect to Melius having
13 no further involvement with the Casino? And
14 the time frame I am talking about is at or
15 about the time that you were purchasing his
16 position in the management agreement.

17 A Can you repeat the question?

18 Q At or about the time that you were
19 purchasing Melius' interest in the management
20 agreement, did you have any discussions -- this
21 is the royal you with the royal Melius -- with
22 respect to his future involvement with the
23 Casino?

24 A When I purchased his interest?

25 Q Yes.

1 Kaufman

2 A No.

3 Q Were there any discussions that you
4 had -- and again, the royal you -- with Melius
5 or any of his representatives about Melius not
6 having any further involvement with the Casino?

7 A I don't recall.

8 Q Take a look at paragraph 22. It is
9 page 12 of the fax line, which is page 11 of
10 the document, the paragraph entitled, "Waiver
11 of General Contractor Designation." It says,
12 "Seller and shareholder" -- which is Melius --
13 "hereby waive and release any claim that either
14 may have on behalf of themselves or any
15 affiliates to be selected and designated as the
16 general contractor for the construction of the
17 project as set forth in section 10.1(4) of the
18 published agreement."

19 Do you see that?

20 A Yes.

21 Q Do you have any understanding of why
22 this provision was put into the buyout
23 agreement?

24 A I guess I didn't want to be tied to
25 any obligations that might have existed.

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1 Kaufman

2 Q Are you guessing?

3 A I am guessing. I am summarizing.

4 Q Well, you said, "I guess that's
5 why." I wanted to make sure that you were not
6 speculating. I really want to know if you
7 recall.

8 A I don't recall. I'm just
9 summarizing what I am thinking.

10 MR. LEVANDER: It's late in the day.

11 You have been at this for a while.

12 He doesn't want your speculation.

13 We can all infer that, perhaps from the
14 document. He wants to know what you can
15 recall.

16 THE WITNESS: I don't recall.

17 Q Does paragraph 22 refresh your
18 recollection as to whether there were any
19 discussions about Melius' future involvement
20 with the Casino.

21 A No.

22 Q Going back to the paragraph 4 of the
23 purchase price, can you explain to me why you
24 had not paid the entire amount set forth in
25 paragraph 4?

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1 Kaufman

2 A Didn't have the money.

3 Q I'm sorry?

4 A The operation didn't have the money.

5 Q What do you mean by that?

6 A We didn't have the money to pay.

7 Q Is it your testimony that the
8 purchase price was to be paid out of proceeds
9 from the operations of the Casino?

10 A No. The partnership, which is
11 obligated to pay the money, had to have the
12 money to pay. It didn't have the money, so it
13 didn't pay.

14 Q So you didn't capitalize the
15 partnership sufficiently to meet its initial
16 obligation of paying the purchase price to
17 Mr. Melius?

18 A Can you repeat that question?

19 Q When you created the partnership in
20 order for it to enter into its business, which
21 is to enter into the management agreement, you
22 did not fund it with sufficient capital in
23 order to pay the purchase price to Melius; is
24 that what you are saying?

25 A Are you asking me whether I funded
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2 \$4 million into the partnership and set it
3 aside for the purpose of funding this?

4 Q I am asking you if you put enough
5 money into the purchaser, which is Messina
6 Management Corp., in order for Messina
7 Management Corp. to meet its obligations under
8 this agreement?

9 A I'm not sure I understand your
10 question.

11 Q From what you are telling me, you
12 never funded Messina Management Corp. with
13 enough money to pay the obligation under this
14 agreement; is that correct?

15 A No, that's not correct.

16 Q When you say that Messina Management
17 Corp. didn't have the money, what do you mean
18 by that?

19 A Our expenses exceeded our revenues.

20 Q What was the source of the revenue
21 for Messina Management Corp.?

22 A The source of revenue?

23 Q Yes.

24 A From gaming activities.

25 Q I take it the gaming activities that

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1 Kaufman
2 you are referring to are those solely resulting
3 from the activities of the Akwasasne Casino?

4 A Yes.

5 Q Are you saying that you didn't
6 generate enough revenues from the Akwasasne
7 Casino in order to meet the payout obligations
8 under this agreement? Is that what you are
9 saying?

10 A I said our expenses exceeded our
11 revenues.

12 Q This is one of your expenses,
13 correct?

14 A That's correct.

15 Q You could have applied your
16 revenues --

17 A What is that?

18 Q You could have applied your revenues
19 to paying this obligation, correct?

20 A I don't know.

21 Q But it's fair to say that the only
22 source of revenues that would be available to
23 pay the purchase price under this agreement
24 would have been revenues that would be
25 generated from the operations of the Akwasasne

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1 Kaufman

2 Casino, correct?

3 A That's fair to say.

4 Q So would it also be fair to say that
5 in order for Melius to get paid the purchase
6 price, the Casino would have had to have
7 generated sufficient revenues such that there
8 was enough money after expenses to pay the
9 purchase price?

10 A That's fair to say that. And that
11 is the balance of the purchase price you are
12 referring to.

13 Q Other than the \$750,000 that you had
14 already paid, is that what you are talking
15 about?

16 A Yes.

17 Q So would it also be fair to say that
18 it was in Mr. Melius' interest for the Casino
19 to be able to generate sufficient revenues so
20 that Messina Management Corp. could meet the
21 balance of its purchase price obligation under
22 this agreement?

23 A Yes.

24 Q Now, with respect to the other
25 agreement with President Riverboat --

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